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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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invasion

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

File: LIN 02 154 53477

Office: NEBRASKA SERVICE CENTER

Date: AUG 20 2003

IN RE: Petitioner:

Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

PUBLIC COPY


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner submitted an untimely appeal, which the director treated as a motion to reopen and reconsider. The director dismissed the motion, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a theater company. The beneficiary is an actor. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to employ him for three years at an undetermined salary.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, the petitioner provides additional documentation.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The beneficiary is a 32-year old citizen of Hungary. Following his graduation from the College of Dramatic and Cinematic Art in Budapest in 1993, the beneficiary joined the Szigligeti Theater of Szolnok, Hungary. In 1996, he joined the Csokonai Theater Company of Debrecen, Hungary.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

8 C.F.R. §214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well known in the field of arts.

8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of

major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary has neither been nominated for, nor has he been the recipient of any significant national or international awards or prizes in his field of endeavor. Initially, the petitioner did not assert that the beneficiary is the recipient or nominee of a major internationally recognized award such as an Academy Award, an Emmy or a Tony. On appeal, counsel for the petitioner asserts that the awards received by the beneficiary "also fall under the category of nomination or recipient of significant national or international awards." The petitioner failed to submit sufficient evidence to demonstrate that the beneficiary had received any significant national or international awards on par with an Emmy or Grammy award. The beneficiary does not satisfy the criterion set forth at 8 C.F.R. §214.2(o)(3)(iv)(A).

In relation to criterion number one, the petitioner submitted several critical reviews that demonstrate that the beneficiary has performed as a lead or starring participant in several productions that have a distinguished reputation. The petitioner failed to provide evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts or endorsements to demonstrate that the beneficiary will perform as a lead or starring participant in productions that have a distinguished reputation.

In relation to criterion number two, the petitioner provided evidence that the beneficiary has received recognition for his performances in Hungary. The director determined that while the beneficiary may be known in the theater community in Hungary, there is no evidence that he has achieved national or international recognition. The director further noted that while the petitioner provided copies of partially translated reviews, it is not known whether or not the articles and reviews appeared in major newspapers, trade journals, magazines or other publications. The record of proceeding contains critical reviews of the beneficiary's performances that were published in local newspapers. In review, the petitioner failed to establish that these critical reviews were published in major newspapers and magazines with a national or international circulation. The beneficiary does not satisfy this criterion.

For criterion number three, the petitioner established that the beneficiary has performed in lead roles for organizations that have a distinguished reputation, but failed to establish that the beneficiary WILL perform in a lead, starring or critical role for such organizations in the future. The petitioner states that the beneficiary will perform in an upcoming production for the petitioner as a "principal player." The petitioner's assertion is insufficient evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The beneficiary does not satisfy criterion number three.

No evidence was submitted in relation to criterion number four.

The record is replete with testimonials about the beneficiary's achievements in his field of endeavor. The beneficiary satisfies criterion number five.

No evidence was submitted in relation to criterion number six. The petitioner failed to state a salary for the beneficiary.

The beneficiary fails to satisfy at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part, that:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The petitioner submitted a consultation from an appropriate U.S. peer group, the Actors' Equity Association, which failed to recommend the approval of the petition. A representative of the Actors' Equity Association stated: "We have reviewed the materials sent to us by the petitioner, and in our opinion, [the beneficiary] does not meet the standards for O-1 status. Therefore, Actors' Equity Association objects to his appearance on an O-1 visa and does not recognize him as an international performer of the first order."

While consultations are not binding on the Bureau, they may be given weight in evaluating an alien's eligibility for an O-1 classification.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in theater.

Beyond the decision of the director, there is a final issue in this proceeding. Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. 8 C.F.R. § 214.2(o)(1)(i). The term "event" is defined at 8 C.F.R. §

214.2(o)(3)(ii) as an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. In the instant case, the petitioner failed to provide an itinerary or schedule. For this additional reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.